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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/188,108 11/09/98 YAMAMOTO

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NEW YORK NY 10112

EXAMINER

HQM.S

ART UNIT

PAPER NUMBER

2661

DATE MAILED:

10/23/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/188,108

Applicant(s)

YAMAMOTO ET AL.

Examiner

Shick C Hom

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/9/98, 10/20/99, 3/31/00.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 3/31/00 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Specification

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

3. Claims 1, 3, and 4 are objected to because of the following informalities: in claim 1 line 3 delete "each said node device" and in line 12 delete "each node device," respectively, and insert ---each of said node devices--- for clarity and antecedent

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basis. In claims 3 and 4 lines 5 and 4, respectively, delete "a plurality of" before "the communication channels." Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. Claims 1-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 lines 4-5, claim 11 lines 3-4, claim 21 line 7, and claim 31 line 4 which recite "a communication channel" is not clear as to whether it is reciting ---one of said communication channels--- of claim 1 lines 2-3, claim 11 line 2, claim 21 lines 3, and claim 31 lines 2-3, respectively, or how it relates to said communication channels of lines 2-3, 2, 3, and 2-3; likewise, in claim 1 lines 5-6, claim 11 line 4-5, claim 21 line 8, and claim 31 line 5 which recite "a communication channel" is not clear as to whether it is reciting ---another of said communication channels--- of claims 1, 11, 21, and 31 lines 2-3 or what. In claim 1 line 6, claim 11 line 5, claim 21 line 9, and claim 31 lines 5-6 which recite "a signal" is not

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clear as to whether it is reciting ---said signal--- of claim 1 line 5, claim 11 line 4, claim 21 line 7-8, and claim 31 line 4, respectively. In claim 1 lines 11-12, claim 11 lines 10-11, claim 21 line 14, claim 26 lines 2-3, claim 27 lines 2-3, claim 31 line 11 which recite "the alteration times" lacks clear antecedent basis because no alteration times have been previously recited in the claim and therefore the limitation is not clearly understood, further it is not clear as to whether it is reciting ---said alteration time--- of claim 1 lines 8-9, claim 11 line 7, claim 21 line 11, and claim 31 line 8, respectively. In claim 1 line 14, claim 21 line 16 which recite respectively corresponding alteration times is not clear as to what respectively corresponding alteration times. In claims 2, 22 lines 2-3, claim 12 line 2, claim 32 lines 2-3 which recite "the transmission channels" lacks clear antecedent basis. In claims 5, 15, 25, and 35 lines 3-4 which recite "a same communication channel" is not clear as to whether it is reciting ---said communication channel--- of claim 1 lines 2-3, claim 11 lines 3-4, claim 21 line 7, and claim 31 line 5, respectively. In claim 7 lines 3 and 4 which recite "a first said node device" and "a second said node device" is not clear as to whether they're reciting --a first one of said node devices--- and ---a second one of said node devices---. In claim 8 line 3-4 which

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recite "another said node device" is not clear as to whether it is reciting ---another one of said node devices---. In claims 8, 18, 28, and 38 line 2 which recite "the controlling" lacks clear antecedent basis. In claims 13, 14, 23, 24, 33 and 34 lines 5-6 which recite "a plurality of communication channels" is not clear as to whether it is reciting ---said communication channels--- of claim 11 line 2, claim 21 line 3, and claim 31 line 3, respectively. In claims 16, 17, 36, and 37 lines 2-3 which recite "the alteration times" lacks clear antecedent basis. In claim 31 line 13 which recite "an alternation time" is not clear as to whether it is reciting said alteration time.

Claims 9-10, 19-20, 29-30, and 39-40 are rejected under 35 U.S.C. 112, second paragraph because they depend from rejected claims 1, 11, 21, and 31, respectively.

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-7, 11-17, 21-27, and 31-37 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-66 of U.S. Patent No. 5,859,718. Although the conflicting claims are not identical, they are not patentably distinct from each other. Note in U.S. Patent No. 5,859,718 claim 1 which recite switching signals between input terminals and output terminals including the buffer means for storing signal sent by the input terminal, the variable channel transmission means for outputting the signal received from said buffer means using the output terminals having variable channel control means for synchronously altering, in accordance with predetermined patterns so that two or more of said variable channel transmission means do not simultaneously output signals with the same channel clearly anticipate the alteration means for changing a communication channel to which a signal is inputted and a channel from which the signal is outputted according to a predetermined pattern as in claims 1, 7, 11, 17, 21, 27, 31, and 37, the storing means as in claims 3, 4, 13, 14, 23, 23, 33, 34, and establishing the pattern so that

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input signals are not concurrently outputted to the same channel as in claims 5, 15, 25, and 35. Claim 7 which recite weighting the predetermined pattern by employing a time at which one of the variable channel transmission means outputs signals with the respective channels during one pattern cycle clearly anticipate controlling the alteration time at which the alteration of the channels is performed to make a predetermined time difference between times corresponding to the devices as in claims 1, 2, 11, 12, 21, 22, 31, and 32. Claim 30 which recite the switching device being provided inside a node device, claim 31 which recite a plurality of node devices being provided, and claim 32 which recite a network wherein switching device is provided for all of the node devices clearly anticipate the network comprising a plurality of node devices whereby each of the node devices include the alteration means and control means as in claims 1-7, 11-17, 21-27, and 31-37.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

8. Claims 1-7, 11-17, 21-27, and 31-37 are rejected under 35 U.S.C. 102(e) as being anticipated by Yamamoto et al.

Yamamoto et al. disclose all the subject matter now claimed. Note col. 39 lines 43-35 which recite transmitting a signal along a specific channel whereby the signal is temporarily held in a buffer, while another channel that is connected to an output terminal of the buffer is changed in consonance with a predetermined pattern, wherein the reading of a packet that is to be transmitted along a specific channel is synchronized with the transmission of a signal from the buffer to that desired channel, so that the packet is output to the desired channel clearly anticipate the method of controlling communications using a plurality of channels including the step of changing the communication channel to which a signal is inputted and the communication channel from which the signal is outputted according to a predetermined pattern as in claims 1, 2, 6, 7,

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11, 12, 16, 17, 21, 22, 26, 27, 31, 32, 36, 37 and the storing means of claims 3, 4, 13, 14, 23, 24, 33, 34. Further, col. 53 line 21 to col. 54 line 45 which recite selecting a basic main transmission patterns and a basic sub-transmission control patterns whereby the individual variable main transmission means and the individual variable sub-transmission means employ the main transmission control pattern and the sub-transmission control pattern using a predetermined time shift for sequentially selecting the output channel clearly anticipate the step of controlling alteration time at which alteration of the channels is performed including using a predetermined time difference between alteration times. Fig 24 shows the network system having four node devices connected in a ring shape by optical fiber cables wherein the internal arrangement of each of these node devices is as shown in Fig. 23 and the arrangement of the network and the structure of a node device is shown in Fig. 41A and 41B clearly anticipate the communication network and node devices as in claims 1, 8, 11, 21, and 31. Col. 10 lines 43-50 which recite the phases, of the transmission wavelengths of the respective variable wavelength transmission units are cyclically changed, i.e. shifted relative to each other so that two or more variable wavelength transmission units do not use the same wavelength when transmitting data, i.e. the variable channel control unit

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synchronously altering, in consonance with predetermined patterns, channels with which the variable channel transmission unit outputs a signal, so that two or more variable channel transmission units do not simultaneously output signals with the same channel clearly anticipate establishing the predetermined pattern so that signals are not concurrently outputted to the same communication channel as in claims 5, 15, 25, and 35.

Allowable Subject Matter

9. Claims 8-10, 18-20, 28-30, and 38-40 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
Ritchie, Jr. et al. disclose a testing facility for a broadband communications system.
Suzuki discloses a data communications system with channel switches.

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11. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9314, (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal
Park II, 2121 Crystal Drive, Arlington, VA., Sixth
Floor (2600 Receptionist at (703) 305-4750).

Any inquiry concerning this communication or earlier
communications from the examiner should be directed to Shick Hom
whose telephone number is (703) 305-4742. The examiner's regular
work schedule is Monday to Friday from 8:00 am to 5:30 pm EST and
out of office on alternate Friday.

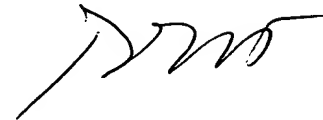
If attempts to reach the examiner by telephone are
unsuccessful, the examiner's supervisor, Douglas Olms, can be
reached at (703) 305-4703.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.



DANG TON
PRIMARY EXAMINER

SH

October 19, 2001